



BULLETIN

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N.M. Supreme Court Disciplinary Board

In the Matter of
ANTHONY F. AVALLONE, ESQ.
Disciplinary No. 01-95-269
An Attorney Licensed to Practice
Before the Courts of the
State of New Mexico

FORMAL REPRIMAND

You are before the Disciplinary Board after proceedings arising out of the complaint filed against you by your former clients Frankie and Marcos Lucero.

In February 1991, the Luceros' minor daughter, Dena, was involved in an accident with an uninsured motorist while driving a vehicle owned by the Hatch Valley School District. She was treated at University of New Mexico Hospital in Albuquerque, where she incurred substantial medical bills for

which the Luceros were held responsible. They retained you in March 1991 to attempt to recover the past and future medical expenses arising out of Dena's injuries.

Although the possibility of a workers' compensation claim existed, this was never pursued by you. Instead, you elected to file a complaint for damages on behalf of Marcos and Dena Lucero against the New Mexico Public School Insurance Authority. When the district court granted the defendant's motion for summary judgment, you appealed to the Supreme Court. The district court's dismissal of the case was upheld. *Lucero v. New Mexico Public School Insurance Authority*, 119 N.M. 465, 892 P.2d 598 (1995).

During the pendency of this case, several things occurred. Dena Lucero turned 18 and moved away from her parents' home. You became aware of the fact that there was a possibility of some recovery under the uninsured motorist clause of Marcos Lucero's insurance policy with Northern Assurance Company of America (hereinafter "Northern.") University Hospital recorded hospital liens in the approximate amount of \$33,000 and gave notice to both you and Northern.

When you learned of Dena's estrangement from her parents, you had her come into your office and sign her name on the retainer agreement previously executed by her mother. Thereafter, you dealt solely with Dena, even though the senior Luceros were still your clients. You had never withdrawn from representing them and were ap-

** IMPORTANT NOTICE **

FOR SENIOR LAWYERS DIVISION MEMBERS

You just received or will very shortly receive a letter inviting you to participate in a post-convention trip to Ixtapa, Mexico, sponsored by the division.

**Please note that the deadline for your deposit
has been extended to July 19th.**

Please refer to the mailing for details.

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pealing the case wherein Marcos Lucero was a plaintiff.

In February 1994, Northern Assurance Company of America agreed to pay policy limits in the amount of \$25,000 and issued a check to you and Dena. You did not notify either University Hospital or the Luceros of your receipt of these funds. You deducted your fee and the costs of the appeal from the \$25,000 and gave the remaining \$12,700 to Dena. University Hospital ultimately sued Northern and recovered \$18,180.13 (the \$25,000 less the amount of your contingency fee).

The hearing committee and a panel of the Disciplinary Board have found that your actions were in violation of Rules 16-102(A), 16-107, 16-108(G) and 16-115(B) of the Rules of Professional Conduct.

Throughout these proceedings you have argued that neither the Luceros nor University Hospital had any right to notice of your receipt of these funds nor any right to share in them. You have claimed that a hospital lien cannot attach to funds received under an uninsured motorist claim; that the Luceros, and not Dena, were responsible for the medical bills; and that only Dena, the injured party, had any claim to the money. You have now conceded that you may have been incorrect in these assertions and agree that while it is true the medical bills of a minor are the responsibility of the parents, the hospital lien could attach to the proceeds of an uninsured motorist claim and the parents had a right to be notified of and participate in any distribution of funds acquired by way of this settlement.

When you began your representation of the Luceros and Dena and while there existed the possibility of a large recovery against the school district and/

or its insurer, the interests of your clients were not in obvious conflict. Conceivably, there could have been a judgment or settlement in an amount sufficient to pay the medical bills and compensate Dena for her pain and suffering. When Dena reached her majority and left her parents' home and when the summary judgment was entered, however, a conflict began to develop. By the time you reached the \$25,000 settlement, the problem should have been obvious to you: not only did you have two clients with a claim to these funds but also there was a third party (University Hospital) with a valid lien against the funds.

It is a basic ethical tenet that one cannot represent parties with conflicting interests. When this problem arose, the obvious course of action would have been to advise both Dena and her parents that you could no longer represent either of them. If you had a reasonable belief that you could continue to work with them, at the very least Rule 16-107(A) required that you consult with both clients and explain to them the risks and advantages of your continued representation. As it was, you simply abandoned the senior Luceros in violation of Rules 16-102(A) and 16-108(G).

The situation was further complicated by the hospital lien, which gave University Hospital an interest in the \$25,000. Rule 16-115(B) of the Rules of Professional Conduct requires that when an attorney receives funds "in which a client or *third person* has an interest," the attorney must promptly notify the client and/or the third person of the receipt of the funds. By failing to notify either the senior Luceros or University Hospital of your receipt of the money from Northern, you violated this rule.

As a practical matter, the hospital's interest was paramount in this instance; unless you had been able to convince the hospital to compromise its claim, all of the funds would have gone to satisfy the liens. Had either of your clients objected to this, and it is clear that the senior Luceros (had they been given the opportunity) would not have, then your obligation would have been to hold the funds in trust until the conflicting claims could be

resolved between the parties. If no resolution was forthcoming, then you would have been required to place the funds with the court and file an interpleader action requesting the court to disburse the funds in an appropriate manner.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. In addition, you will be placed on supervised probation for a period of one (1) year from today's date. As conditions of probation, you must take and pass the Multistate Professional Responsibility Examination and commit no further violations of the Rules of Professional Conduct. To ensure that no such violations occur, you must meet with your supervisors, Lawrence M. Pickett and Michael T. Murphy as directed by them and follow their instructions to the letter. Any failure on your part to adhere to these conditions will be brought to the attention of the Supreme Court pursuant to the requirements of Rule 17-206(G). If found in contempt, you could be fined, censured, suspended, or disbarred.

This formal reprimand will be filed with the Supreme Court in accordance with Rule 17-206(D) and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

The costs of this action in the amount of \$188.08 have been assessed against you and already paid to the Disciplinary Board office.

The Disciplinary Board
S/Michael D. Bustamante, Chair

Proposed Revision of Appellate Rules

The Supreme Court is considering amendments to the Rules of Appellate Procedure. Written comments may be sent to:

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DIRECTORY CORRECTION

The phone number provided for the Bench and Bar Directory was incorrect for Judge Richard A. Parsons (see Judiciary Section under Twelfth Judicial District). The correct number for Twelfth Judicial District Judge Richard A. Parsons is 648-2902.